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Supreme Court of the United States.

OCTOBER TERM, 1885. No. 80.

THE BRIDGEWATER IRON COMPANY,
Plaintiff in Error,

vs.

HERMAN LISSBERGER.

DEFENDANT'S BRIEF.

DARWIN E. WARE,
For H. LISSBERGER.

Supreme Court of the United States.

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THE BRIDGEWATER IRON COMPANY, *Plaintiff in Error,*

vs.

HERMAN LISSBERGER.

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STATEMENT OF THE CASE.

This case comes to this court by a writ of error on the judgment of the Circuit Court of the United States for the District of Massachusetts, entered on a verdict rendered in an action of tort in favor of the defendant, who was the plaintiff in said action, and against the plaintiff in error, who was the defendant in said action. A bill of exceptions made by the plaintiff in error to instructions of the Circuit Court to the jury, and allowed by the judge of said Circuit Court, forms a part of the record in said suit, and presents a question of law for revision by this court.

By this bill of exceptions, it appears that in the city and State of New York, on the tenth day of August, 1877, one George B. Stetson made an assignment in writing, absolute in form, to Herman Lissberger of said New York, of twenty shares of stock in said Bridgewater Iron Company, a manufacturing corporation established under the laws of the Commonwealth of Massachusetts, and of the certificate for said shares of said Bridgewater Iron Company, showing the said George B. Stetson to be the proprietor thereof, and that they were of the par value of one thousand dollars each;

that said assignment was annexed to said certificate for the stock, and both were delivered to the defendant in error as collateral security for the payment of the notes of said George B. Stetson to the defendant in error, given by said Stetson for the price of 60,000 pounds of refined ingot copper sold to said Stetson by the defendant in error, and delivered; that this sale and delivery of the copper and the delivery of the notes, certificate for stock, and assignment, were in execution of a broker's note of the sale of said copper for such notes, so secured, amounting to seventeen thousand seven hundred and thirty-seven dollars and twenty-nine cents ($17,737.29).

It further appears that on Dec. 14, 1878, the defendant in error presented to Nahum Stetson, who was the clerk and treasurer of the plaintiff in error, said assignment of stock, and by his attorney demanded by a written demand that it should be recorded on the books of the company, and that a new certificate of said shares should be delivered to him, at the same time tendering the old certificate, and that officer refused to record said assignment, and refused to issue a new certificate to said defendant; that such written demand showed that twelve thousand three hundred and sixty-seven dollars and two cents ($12,367.02) of the amount for which George B. Stetson originally gave his notes, and for which the defendant in error held his notes as security, still remained unpaid.

By said bill of exceptions, it further appears that until said fourteenth day of December, 1878, the defendant in error did not present his assignment to the clerk of the Bridgewater Iron Company for record, nor upon tendering the certificate of George B. Stetson, assigned to said defendant in error, demand a new certificate; that on the twenty-fourth day of May, 1878, the plaintiff in error, in due form, made an attachment of said shares of stock under a writ sued out against said George B. Stetson by the plaintiff in error for a debt of twenty-three thousand two hundred and three dollars and seventy-three cents ($23,203.73) due from said George B. Stetson to the corporation; that judgment was recovered in the action begun

by said writ and execution issued, and said execution was in due form levied on said twenty shares of stock on the thirteenth day of November, 1878, and a sale of them duly made by the sheriff on the twenty-first day of said November, at which sale they were purchased by the plaintiff in error.

It further appears by said bill of exceptions that at the time George B. Stetson purchased said copper of the defendant in error and made the assignment of said stock, Aug. 10, 1877, he was president and director of said Bridgewater Iron Company, and continued to be such president and director until Nov. 22, 1878, the day after the sale on execution of his stock, when he resigned at the request of Nahum Stetson, the clerk, treasurer, and manager of the Bridgewater Iron Company, and the father of George B. Stetson, and the agent of the corporation in causing the stock to be attached.

Upon the question of knowledge before the attachment on the part of the corporation through said Nahum Stetson, of the assignment of said stock by George B. Stetson to the defendant in error, it appears by the bill of exceptions that at the time of said attachment, George B. Stetson owed the plaintiff corporation said twenty-three thousand two hundred and three dollars and seventy-three cents ($23,203.73) for money collected in New York one or two years before, as the price of merchandise sold by the plaintiff in error, which money he had wrongfully appropriated to his own use. In answers to interrogatories propounded in this action by the defendant in error to said Nahum Stetson, as an officer of said corporation, for purposes of discovery, said Nahum Stetson stated under oath that he heard before the attachment that there was a rumor in New York that George B. Stetson, his son, had pledged his stock to Herman Lissberger, that this was some time before the attachment was made in the company's suit. (Record, fol. 44.) In answer to subsequent interrogatories propounded by the defendant in error, said Nahum Stetson stated (R., fols. 51, 52) he was not sure whether what he heard about the pledge by said George B. Stetson of his stock to Herman Lissberger was

heard by him before the attachment or before the execution issued, and further that he did not know when he heard this, and that what he heard was from Isaac Pratt, Jr., solely, who in a conversation with him, Nahum Stetson, in Mr. Pratt's office, said he had heard a rumor in New York that George B. Stetson's stock was pledged, but he did not say to whom. It further appears by said bill of exceptions (R., fol. 30) that an agent of the defendant in error, in the early spring of 1878, informed said Isaac Pratt, Jr., who was then a director of the plaintiff in error, of said transfer of stock to the defendant in error, giving to said Pratt as a reason that he wanted the company to know about it; and that, immediately before bringing said suit and making said attachment, said Nahum Stetson went to New York City and obtained from his son a statement of the accounts of money he had collected and used and could not refund; and that, in this interview with his son, said Nahum Stetson did not refer to those twenty shares of stock which he knew his son George owned, and which constituted the bulk of said son's property, and did not ask his son to transfer it to the plaintiff in error, by way of making good his defalcation. (R., fol. 47.) The inference is irresistible that what the agent of the defendants in error told Pratt was told by Pratt to Nahum Stetson; and, as the date of such communication to Pratt—namely, early spring—corresponds with the date "March or April" when Nahum Stetson set about getting from his son an account of money owed by his son for some two years to the company, and then attached this stock in an action on this account, the inference is equally strong that it was this knowledge that the stock was pledged to the defendant in error that prompted the father to get the account and make the attachment; and it is hardly conceivable that a father seeking to secure restitution from the son of the money as to which he was a defaulter would not have requested him voluntarily to turn over this stock, constituting the bulk of his property, to the defrauded company, by way of restitution, if the father had not known that it was beyond his son's power to do so.

The jury have found that Nahum Stetson the treasurer, clerk, and manager of the plaintiff in error, who caused the attachment of this stock to be made (R., fol. 41), had, when he made said attachment, full knowledge of the transfer of the stock to the defendant in error; and his knowledge was that of the plaintiff in error.

The question of law raised by the bill of exceptions, and the only one, is whether or not, under the statutes of Massachusetts relating to the transfer of stock in manufacturing corporations, the unrecorded transfer of this stock to the defendant in error, as collateral security for the debt of the transferror, was a valid transfer, as against the attachment of the plaintiff in error, made with knowledge of such transfer.

We refer to the following statute provisions of Massachusetts upon the transfer of stock in manufacturing corporations, and the special acts applicable to the plaintiff in error:—

An Act defining the General Powers and Duties of Manufacturing Corporations. Ch. 65, St. 1808, § 4.

SECT. 4. *Be it further enacted*, That any share may be alienated by the proprietor thereof, by a deed under his hand and seal, acknowledged before some justice of the peace, and recorded by the clerk of the corporation in a book to be by him kept for that purpose, and any purchaser named in such deed so recorded, shall, on producing the same to the treasurer, and delivering up to him the former certificate, be entitled to a new certificate executed in form aforesaid. [March 3, 1809.]

An Act defining the General Powers and Duties of Manufacturing Corporations. Ch. 53, St. 1829, § 4.

Be it further enacted, That any share or shares may be alienated by the proprietor thereof, by a deed under his hand and seal acknowledged before some justice of the peace, and recorded by the clerk of the corporation, in a book to be kept for that purpose; and any purchaser named in such deed, so recorded, shall, on producing the same to the treasurer and delivering to him the former certificate, be entitled to a new certificate in form aforesaid.

On Manufacturing Corporations. Ch. 38, § 12, R. S. 1836.

Any shares may be transferred by the proprietor thereof, by a deed under his hand and seal, acknowledged before some justice of the peace,

and recorded by the clerk of the corporation, in a book to be kept for that purpose; and the purchaser named in such deed, so recorded, shall, on producing the same to the treasurer, and delivering to him the former certificate, be entitled to a new certificate.

An Act concerning Manufacturing Corporations. Ch. 45, St. 1846.

SECT. 1. Any shares in manufacturing corporations may be transferred by the proprietor thereof, by an instrument in writing, under his hand, recorded by the clerk of the corporation in a book to be kept for that purpose; and the purchaser named in such instrument, so recorded, shall, on producing the same to the treasurer, and delivering to him the former certificate, be entitled to a new certificate.

SECT. 2. That part of the twelfth section of the thirty-eighth chapter of the Revised Statutes which requires the transfer of shares to be by deed, under seal, and acknowledged before some justice of the peace, is hereby repealed.

SECT. 3. This act shall take effect from and after its passage.

Of Manufacturing and other Corporations organized under Special Charters. Ch. 60, § 13, G. S. 1860.

Shares may be transferred by the proprietor, by an instrument in writing under his hand and recorded by the clerk of the corporation in a book to be kept for that purpose. The purchaser named in such instrument so recorded shall, on producing the same to the treasurer and delivering to him the former certificate, be entitled to a new certificate.

An Act concerning Manufacturing and Other Corporations. Ch. 224 of the Acts of 1870, § 26.

Shares may be transferred by the proprietor, by an instrument in writing under his hand, which shall be recorded by the clerk of the corporation in a book to be kept for that purpose. The purchaser named in such instrument so recorded shall, on producing the same to the treasurer, and delivering to him the former certificate, be entitled to a new certificate. In case of the loss of a certificate, a duplicate certificate may be issued upon such reasonable terms as the directors shall prescribe.

An Act relating to the Transfer of Stock in Corporations. Ch. 302, St. 1881.

SECT. 1. No sale, assignment, or transfer of stock in any corporation shall affect the right of any corporation to pay any dividend due

upon said stock, or against the title or rights of any attaching creditor, until it is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been transferred: *provided*, that no attachment of said stock as the property of the vendor made after such sale, assignment, or transfer shall defeat the title or affect the rights of the vendee if such record is made or a new certificate issued within ten days after such transfer is made.

SECT. 2. This act shall take effect upon its passage.

Of Manufacturing and Other Corporations. Ch. 106, P. S. § 30, 1882.

Shares may be transferred by the proprietor by an instrument in writing under his hand, which shall be recorded by the clerk in a book to be kept for that purpose. The purchaser named in such instrument so recorded shall, on producing the same to the treasurer and delivering to him the former certificate, be entitled to a new certificate. In case of the loss of a certificate, a duplicate certificate may be issued upon such terms as the directors shall prescribe.

An Act relating to the Transfer of Stock in Corporations. Ch. 229, St. 1884.

Be it enacted, etc., as follows: The delivery of a stock certificate of a corporation to a *bona fide* purchaser or pledgee, for value, together with a written transfer of the same, or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred.

An Act for defining the Rights and Duties of Railroad Corporations in Certain Cases. Ch. 187, St. 1833, § 8.

Be it further enacted, That the shares in the capital stock in any railroad corporation may be transferred by conveyance in writing, recorded either by the treasurer in books to be kept in his office, or by an officer duly authorized for that purpose by the directors, in books to be kept at such other place as they may appoint. And no conveyance of any such shares shall be valid to hold the same against the legal claims of any other person or persons than the grantor or grantors, or his or their executors or administrators, unless so recorded. And on the making of such transfer, the certificate of the shares transferred shall be delivered up and cancelled. And it shall be the duty of every railroad corporation to cause a transcript of the record of all transfers, not originally recorded

on the books kept by the treasurer, to be entered on the books of the said treasurer, within ten days from the date of the original record. And in case such transcript is not thus entered, the transfer shall not operate to the prejudice of any intervening claims.

An Act concerning Street Railway Corporations. Ch. 229, St. 1864, § 10.

The shares in the capital stock of such corporation shall be deemed personal estate, and may be transferred by a conveyance in writing, recorded by the treasurer, in books kept in his office. No conveyance of shares shall be valid against any other persons than the grantors or their legal representatives, unless so recorded. On making the transfer and surrendering the old certificate a new certificate shall be granted.

An Act to establish the Bridgewater Iron Manufacturing Company. Ch. 20, St. 1825.

SECT. 1. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by authority of the same,* That Nathan Lazell, Seth Johnson, Silas Bullard, John Fuller, Abisha Stetson, Jacob Perkins, and Nathan Lazell, Jun., together with such other persons as have associated, or may hereafter associate with them, their successors and assigns, be, and they are hereby made a corporation, by the name of the Bridgewater Iron Manufacturing Company, for the purpose of manufacturing iron, and its various modifications, and for this purpose shall have all the powers and privileges, and be subject to all the duties and requirements, contained in an act, passed in the year of our Lord one thousand eight hundred and nine, entitled "an act defining the general powers and duties of manufacturing corporations," and in the several acts passed in addition thereto.

SECT. 2. *Be it further enacted,* That said corporation may be lawfully seized of such real estate, not exceeding the value of fifty thousand dollars, and such personal estate not exceeding fifty thousand dollars, as shall be necessary and convenient for establishing and carrying on the manufactures aforesaid. June 18, 1825.

An Act to amend an Act to incorporate the Bridgewater Iron Manufacturing Company. Ch. 98, St. 1866.

Be it enacted, etc., as follows:

SECT. 1. The Bridgewater Iron Manufacturing Company, a corporation established in Bridgewater, is hereby authorized to add to its capital stock six hundred thousand dollars, which shall be divided into shares of one thousand dollars each, and to hold real estate to an amount not exceeding three hundred thousand dollars.

SECT. 2. Said corporation may manufacture copper and other metals in their various modifications, and in addition to the articles now authorized by its charter.

SECT. 3. Said corporation shall be called and known hereafter by the name of the Bridgewater Iron and Copper Company.

SECT. 4. This act shall take effect upon its passage.

An Act to establish the Name and fix the Capital of the Bridgewater Iron Manufacturing Company. Ch. 26, St. 1874.

Be it enacted, etc., as follows:

SECT. 1. The capital of the corporation established under the twentieth chapter of the acts of the year eighteen hundred and twenty-five, by the name of the Bridgewater Iron Manufacturing Company is hereby fixed at the sum of four hundred and eighty thousand dollars, divided into shares of one thousand dollars each, to be divided among its present stockholders in proportion to their respective interests, subject to be reduced or increased according to the provisions of general laws.

SECT. 2. If said corporation, by vote of a majority in interest of its stockholders, at a legal meeting called for the purpose, shall, within six months from the passage of this act, vote to accept this act, and shall within said six months cause to be recorded in the registry of deeds in the county of Plymouth, where said corporation is established, a certificate signed by its president, treasurer, clerk, and a majority of its directors, stating the amount of its debts and credits, and an estimate of the value of its real and personal estate for the purpose of carrying on its business at the time of making such certificate, and that the value of its property, over and above all its debts and liabilities, is not less than the amount of its capital as fixed by this act; and if said officers shall make oath that they have carefully examined the records and accounts of said corporation, and faithfully estimated the value of the property and funds thereof, and that said certificate by them signed is true according to their best knowledge and belief, then said corporation, together with its members and officers, shall be entitled to the same rights, privileges and immunities, and be subject to the same liabilities and provisions of law, as if said corporation had been organized under the provisions of the two hundred and twenty-fourth chapter of the acts of the year eighteen hundred and seventy, with a capital of four hundred and eighty thousand dollars fully paid in as required by said act, and had duly made and filed the certificate mentioned in the thirty-second section of said act.

SECT. 3. Said corporation shall hereafter be called and known by the name of the Bridgewater Iron Company.

SECT. 4. The first and third sections of the ninety-eighth chapter of the acts of the year eighteen hundred and sixty-six are hereby repealed,

and all deeds and conveyances of real estate running to or from, and all contracts, doings and proceedings had, made and done in the name of the Bridgewater Iron Manufacturing Company since the twenty-first day of March in the year eighteen hundred and sixty-six, are hereby ratified and made valid and shall have the same force and effect as if they had run to and from, and as if they had been had, made and done in the name of the Bridgewater Iron and Copper Company, and as if said ninety-eighth chapter of the acts of the year eighteen hundred and sixty-six had been accepted by said corporation.

SECT. 5. Nothing contained in this act shall affect or impair any debts or obligations existing at the time of recording said certificate.

SECT. 6. This act shall take effect upon its acceptance as provided in the second section.

Approved February 25, 1874.

The instructions of the court below were correct.

A.

The transfer act of Massachusetts, under which this case arises, is § 26, Ch. 224, St. 1870. The act, Ch. 26, St. 1874, was accepted and its terms complied with by the company. (Record, fol. 25.)

Two different interpretations have been given by different courts to transfer acts in general laws or special charters, of the character of those in the statutes of Massachusetts relating to manufacturing corporations, in force up to 1881.

They have been held to have no effect upon the transfer of the legal title to the stock, and to be only rules for the benefit of the corporation, to be observed by the purchaser of stock, in order to become a member of the corporation, entitled to vote and to receive dividends. Under this interpretation, where the transfer rule has not been complied with, but a written assignment of the stock has been made, and the certificate thereof has been delivered to the purchaser, the title passed thereby would be good as against subsequent purchasers and attaching creditors without notice.

Bank *vs.* Kortwright, 22 Wend. 348.
McNeil *vs.* Bank, 46 N. Y. 325.
Smith *vs.* Crescent City, etc., Co., 30 La. An. 1378.
Ross *vs.* Southwestern R.R. Co., 53 Ga. 514.

Duke *vs.* Navigation Co., 10 Ala. 82.
Robinson *vs.* National Bank of New Berne, 95 N. Y. 637.
Clark *vs.* German Security Bank, 61 Miss. 611.
Seeligson *vs.* Brown, 61 Texas, 114.

These transfer acts have been held to prescribe rules of transfer for the benefit of the corporation and *bona fide* purchasers without affecting the transfer of the legal title between the parties, or, when affecting the legal title, not affecting the transfer of the equitable interest by an assignment accompanied by a delivery of the certificates.

Under this interpretation, where the transfer rule is not complied with, some courts hold that an attaching creditor takes only the interest of the debtor, subject to all the equities or claims the debtor has created.

United States *vs.* Vaughn, 3 Binney, 394.
Commonwealth *vs.* Watmough, 6 Whart. 117.
Finney's Appeal, 59 Penn. St. 398.
Broadway Bank *vs.* McElrath, 2 Beas. 24.
Colt *vs.* Ives, 31 Conn. 25.
Continental National Bank *vs.* Eliot National Bank, U. S. Circuit Court (Mass. Dist.), 7 Federal Rep. 369.

Other courts have held that the transfer rule must be complied with, to pass the legal title as against attaching creditors.

Fisher *vs.* Essex Bank, 5 Gray, 373.
People's Bank *vs.* Gridley, 91 Ill. 457.

No court in the land has ever held that, without compliance with the transfer rule, no title, either legal or equitable, can be transferred as between the parties to the transfer.

Lowell on Transfer of Stock, § 91.

It has, however, been settled by this court in a case arising under a transfer act similar to this Massachusetts act of 1874, in which it was held that an equitable title passed as between

the parties to the transfer, that such a transfer was valid without compliance with the prescribed formalities, as against an attaching creditor with notice of the transfer, unless the passing of a title as between the parties to the transfer without such formalities was "prohibited" by the laws of the State under which the corporation was organized, the shares of which were the subject of the transfer.

Black *vs.* Zacharie, 3 Howard, 483.

To maintain, therefore, that the instructions given by the court below were erroneous, the plaintiff in error must show that the Massachusetts transfer act of 1874 prohibits or invalidates a transfer as between the parties where the transfer rule is not complied with.

If the plaintiff in error cannot show that the Massachusetts transfer act renders transfers of no effect as between the parties to the same, unless the prescribed formalities of a full transfer are complied with, then the question of the validity of such a transfer as against an attaching creditor having notice of the same, becomes a question of general commercial law, not a local question of the construction of a local transfer act, and the doctrine of Black *vs.* Zacharie must control this case.

B.

There is nothing in the Massachusetts transfer act denying or prohibiting effect to a transfer as between the parties while formally incomplete, and nothing of this kind has been brought into it by construction in any case decided by the Supreme Judicial Court of that State. On the contrary, that court has often recognized the validity of such incomplete transfers as between the parties to them, and has never decided that they were invalid as against attaching creditors having notice of the same.

An examination of the Massachusetts cases will justify this statement.

In the case of Turner *vs.* Marblehead Social Insurance Co., 10 Mass. 476, where a statute incorporating an insur-

ance company provided that no transfer of any share should be permitted or valid until the whole capital stock should have been paid in, it was still held that a *bona fide* sale of his shares by a debtor to his creditor in satisfaction of the debt was sufficient to transfer the equitable title so far as to justify the company in issuing certificates to the assignee, and to entitle him, when the full amount of the shares should be paid in, to have the transfers entered in the books of the company, and to have a certificate of his shares as against a creditor of the assignors attaching said shares after said assignment, and before the capital stock was paid in, and having notice of the assignment.

In the case of Nesmith *vs.* Washington Bank, 6 Pick. 324, where the charter of a bank provided that the capital stock should not be sold or transferred, but should be held by the original subscriber during one year from the date of the charter, and a by-law of the bank declared the stock of each stockholder pledged for what he owed the bank, and within the year the plaintiffs, original subscribers, assigned their shares to Ball & Davis, who assigned the same to the Provident Institution as security for a loan, and the Provident Institution gave notice thereof to the bank, and paid the last instalment due on these shares, it was held that the assignment was valid in equity, and that the shares were not held by the bank as security for a loan from the bank to the plaintiffs, made after notice of said assignment.

In the opinion of the court, Parker, C. J., says: "Ball & Davis, and those claiming under them, could not become owners for the year, during which time the shares remained, to all legal purposes, the plaintiffs' property, liable for their debts to *creditors without notice.*"

In Sargent et al. *vs.* Franklin Insurance Co., 8 Pick. 90, where the by-laws of the defendant company provided that the certificates of stock should be transferable only at the office of the company by the holder personally, or by his attorney, and the defendant refused to enter on its books a transfer of shares in pursuance of an assignment of the same made by the former holder to the plaintiffs, and caused the

same to be attached as the property of the former holder, the defendant was held liable in damages to the plaintiffs as assignees of the shares.

The court say, page 98: "This assignment would clearly be good as between the parties to it. Adams and Amory had granted all their right to the plaintiffs; and the defendants had notice of it before they attempted to obtain the property for themselves by legal process."

In Sargent *vs.* Essex Marine Railway, 9 Pick. 202, where the transfer rule of a by-law was treated as of the same force as though it had been prescribed by the charter, it was decided that an assignment of shares by deed, acompanied by delivery of the certificates to the purchaser was valid between the parties, and against an attaching creditor without notice, although the by-laws of the corporation required that all transfers should be made in the treasurer's books. The provision in the by-laws was declared to be "an arrangement of the corporation for their own convenience, and is so far binding upon purchasers that they cannot compel any payment of dividends or insist upon certificates without applying to have a transfer made conformably to the by-laws." The court also say: "The by-laws provide that all transfers shall be made in a book to be kept by the treasurer for that purpose, and according to a particular form therein prescribed. This is not essential to the passing of the property as between the parties or against creditors, if the assignment is not fraudulent."

In Eames *vs.* Wheeler, 19 Pick. 442, a case arising under St. 1808, Ch. 65, the court say: "These deeds were not recorded in pursuance of the 4th Section of St. 1808, Ch. 65, but this omission does not affect the validity of the deed as between the vendor and vendee. The recording of the deed of sale was required principally for the benefit of the corporation, to enable them to know to whom dividends were to be paid, and for other purposes. . . . It is also to be remarked that the statute, in providing one mode of alienating the shares of the stockholders, does not prohibit any other mode of alienation. In this respect, the case differs from that of the Bank

of Utica *vs.* Smalley, 2 Cowen, 770. In the act incorporating the stockholders of that bank, it was enacted that no transfer should be valid or effectual until such transfer should be registered in a book or books to be kept for that purpose by the directors. Notwithstanding this prohibitory clause, it was held that the transfer of bank stock, before it was recorded, was valid as between the vendor and vendee."

The case of Fisher *vs.* The Essex Bank, 5 Gray, is the first case in Massachusetts that construed a transfer act more favorably for the attaching creditor. The form of the act in this case was, "Transferable only at its banking house and on its books." The stock had been transferred for value by a delivery of the certificate, with a power of attorney to the purchaser, signed on the back of the certificate by the seller, to transfer the stock on the books of the corporation, and the corporation had been notified of the transfer; but, before it was transferred on the books of the corporation, it was attached by a creditor of the seller, who had no notice of the transfer, and the court held that the attaching creditor had "the *better* legal title." The whole reasoning of the court was to the effect that transfer on the books of the company was necessary to pass the legal title; and, as the legal title was taken and held by a valid attachment before it was transferred, the title of the attaching creditor prevailed. The case, however, is no authority for making the transfer act prohibitive of an equitable title, good as between the parties, made through the informal transfer. It does not deny that a title passed by the transfer, but asserts that the title of the attaching creditor is the "*better legal*" title. Chief Justice Shaw, in his opinion, cites with approval the minority opinion in Commercial Bank of Buffalo *vs.* Kortright, 22 Wend. 348, to the effect "that, when the charter contains a provision that no transfer shall be valid unless registered in the books, an unregistered transfer does not convey a legal title, but an equitable interest only, subject to all prior equities."

He also cites with approval the language of the court in Sabin *vs.* Bank of Woodstock, 21 Vt. 362: "We entertain no

reasonable doubt that the mode of transfer of stock pointed out in the charter is the only mode which the public are bound to regard as conveying the title. All persons, *unaffected with notice to the contrary*, are at liberty to act upon the faith of the title being where it appears upon the books of the corporation to be." He also cites the case of Oxford Turnpike *vs.* Bunnell, 6 Conn. 558; but in that case, and in the Connecticut cases on which it was based, the attaching creditors had no notice of the prior informal transfers. "The effect of notice to an attaching creditor of an unrecorded transfer was not considered" in Fisher *vs.* Essex Bank, says Allen, J., in Sibley *vs.* Quinsigamond National Bank, 133 Mass. 521.

The next case decided by the court of last resort in Massachusetts was Blanchard *vs.* The Dedham Gaslight Company, 12 Gray, 213, and arose under the transfer act in the 12th Section of Ch. 38, R. S., as modified by St. 1846, Ch. 45, providing that "any shares in manufacturing corporations may be transferred by the proprietor thereof, by an instrument in writing, under his hand, recorded by the clerk of the corporation in a book to be kept for that purpose; and the purchaser named in such instrument, so recorded, shall, on producing the same to the treasurer, and delivering to him the former certificate, be entitled to a new certificate." In this case there was a written assignment of the stock on the back of the certificate for a valuable consideration, and a delivery of the certificate; but such assignment was not recorded before the stock was attached by a creditor of the assignor having no notice of the assignment. The court, on the authority of Fisher *vs.* Essex Bank, held that the attaching creditor's title prevailed. The opinion is a *per curiam* opinion, in which the grounds of the decision are not developed. But there is nothing in it to show that, in the opinion of the court, the transfer act prevented the passing of a title by the assignment, that was good between the parties to the same.

In the case of Stone *vs.* Hackett, 12 Gray, 227, in the same volume with the previous case, the court say in rela-

tion to the effect of unrecorded transfers, where recording is required by a transfer act: "The conveyance or transfer of the shares to the plaintiff in her capacity as trustee was full and complete, and vested in her the legal title to the property. No further act was to be done by the original owner of the shares to consummate the plaintiff's title. As between the parties, the delivery of the certificates of stock with the assignments of some of them, and the power of attorney to transfer the others, were equivalent to a complete executed transfer of the shares. Nor is it at all material to the validity of the plaintiff's title that transfers of the shares had not been recorded in the books of the different corporations, and new certificates of stock taken out by her. That was not necessary to the conveyance of the legal title as between the donor and the plaintiff. This is well settled by the authorities in this State."

It is true this decision is also based upon the specific language of the transfer act; but, independently of such language the court holds that in the cases that had been decided in that court the statute requirement of a record of a transfer of stock did not prevent a transfer from having complete effect between the parties.

In Dickinson *vs.* Central National Bank, 129 Mass. 279, the court interprets Fisher *vs.* Essex Bank as authority for the superior title of an attaching creditor "*without notice*" of a written transfer of stock, accompanied by a delivery of the certificate, over the title of the transferee, where, by the transfer act, stock is transferable only on the books of the corporation, but holds that as between Pond, the assignor of National Bank shares, and Coes & Co., the assignees, "the delivery of the certificate, as collateral security for a debt due the latter, with a power of attorney to transfer the shares and execute an assignment of them to any other person, conferred a power coupled with an interest, and gave to any one claiming under an execution of the power a right to demand of the bank a certificate of the stock. . . . The delivery of the stock as security for a debt, with the execution of the power of attorney, gave to Coes & Co. a power

coupled with an interest, which was not revoked by the bankruptcy of Pond, and could only be revoked by the payment of the debt. . . . He [the assignee under the bankrupt act] took such estate only as the bankrupt had a beneficial as well as a legal interest in."

In the Fitchburg Savings Bank *vs.* Torrey, 134 Mass. 239, the court say, "The execution of the assignment on the back of the certificate by Brown, and the delivery of the certificate with this assignment by Brown, with the assent of Torrey, to the bank, passed as between the parties all the interest of Brown and Torrey in the shares to the bank, to hold as collateral security for the payment of the note. Dickinson *vs.* Central National Bank, 129 Mass. 279. Cushman *vs.* Thayer Manufacturing Company, 76 N. Y. 365.

"Such a title is sometimes called an equitable title, with an irrevocable power to acquire the legal title, and sometimes a legal title as between the parties; but this is a question of the proper use of words. The bank had a right to fill the blank in the assignment so as to make it an assignment to itself, and then to present it to the corporation for record, and to receive a new certificate in its own name; and without such record, after notice to the corporation that the bank held the certificate of these shares as collateral security, the corporation could not rightfully issue a new certificate of the shares to any other person than the bank, except by its consent, unless that person's title to the shares was superior to that of the bank. Bank *vs.* Lanier, 11 Wall. 269. Dickinson *vs.* Central National Bank, *ubi supra*."

In Boston Music Hall Association *vs.* Cory, 129 Mass. 435, the court held an unrecorded transfer of shares in a corporation, that was subject to no transfer act requiring the record of transfers in a book of the corporation, to be valid against an attachment by a creditor of the transferror, although the corporation had no notice of the transfer before the attachment, and the attaching creditor had no notice of the transfer at the time of the attachment. In answer to the claim that the whole system of Massachu-

setts legislation providing for the attachment of shares in corporations implied that transfers should not be valid as to creditors, unless recorded, the court says: "This consideration is not sufficient to control the law as long since settled by the decisions of this court. It requires a clear provision of the charter itself, or of some statute, to take from the owner of such property the right to transfer it, in accordance with known rules of the common law. And by those rules, the delivery of a stock certificate, with a written transfer of the same to a *bona fide* purchaser, is a sufficient delivery to transfer the title as against a subsequent attaching creditor. Sargent *vs.* Essex Marine Railway, 9 Pick. 201; Sargent *vs.* Franklin Insurance Co., 8 Pick. 90; Fisher *vs.* Essex Bank, 5 Gray, 373; Dickinson *vs.* Central National Bank, *ante* 279."

In the case of the Central National Bank *vs.* Williston and others, 138 Mass. 244, where the court, in the year 1884, gave its construction of the transfer act applicable to the case at bar, it held that where an owner of stock in a manufacturing corporation, and holder of a certificate thereof in his own name, delivered the certificate with a printed assignment in blank, signed by him, indorsed upon it, to a person for the purpose of transferring the stock to him as collateral security for a debt, and before the assignment had been filled out, and before notice of the assignment had been given to the corporation, the stock was attached by a creditor having no notice of the assignment as the property of the assignor, the creditor's attachment gave a good title as against the assignment. The court thus comments upon the various transfer acts in Massachusetts legislation applicable to different corporations, p. 246: "In the first general law concerning manufacturing corporations, St. 1808, Ch. 65, it was provided that shares might be alienated by a deed under seal, acknowledged before a justice of the peace, and recorded by the clerk of the corporation in a book to be kept for the purpose. This provision, with the change from a deed acknowledged to an instrument in writing, made by the St. of 1846, c. 45, remained in force until St.

of 1884, c. 229, and was applied to the many corporations which have been brought by statutes within the general designation of manufacturing corporations. When general laws were enacted concerning railroad and street railway corporations, it was provided that shares might be transferred by an instrument in writing, recorded by the treasurer in books kept in his office, and that no conveyance of shares should be valid against any other persons than the grantors and their legal representatives, unless so recorded. Sts. 1833, c. 187, § 8; 1864, c. 229, § 10. Pub. Sts., c. 112, § 56, and c. 113, § 13. The probable intention of the Legislature was to put the transfer of stock in railroad corporations on the same footing as that of stock in manufacturing corporations, and to express in the later acts the construction given to the earlier ones."

Clearly, the later acts show that it is their intention that an unrecorded transfer should pass the title to stock as between the parties to the same.

Stone *vs.* Hackett, 12 Gray, 227, 232.

C.

In Central National Bank *vs.* Williston, *ubi supra*, p. 245, the court says, in regard to transfer acts: "By some courts, they are held to be intended only for the benefit of the corporation, to regulate its relations with its stockholders; by others, they are held to be in the nature of registry laws, regulating the transfer of the stock as to third parties. Perhaps the former is the view more generally taken."

If the Massachusetts transfer act under consideration is to be regarded as in the nature of a registry act, the cases in Massachusetts arising under its registry act in relation to conveyances of real estate, when it contained no provision specially applicable to an unrecorded conveyance of which a subsequent purchaser or attaching creditor had notice, and the grounds of the decisions in such cases, are in point. These cases hold such subsequent purchases and attachments fraudulent and void.

The registry act of 1783, Ch. 37, § 4, was as follows: —

"And no bargain, sale, mortgage, or other conveyance in fee-simple, fee-tail, or for term of life, or any lease for more than seven years from the making thereof, of any lands, tenements, or hereditaments, within this Commonwealth, shall be good and effectual in law to hold such lands, tenements, or hereditaments, against any other person or persons but the grantor or grantors and their heirs only, unless the deed or deeds thereof be acknowledged and recorded in manner aforesaid" in the registry of deeds.

In Farnsworth *vs.* Childs, 4 Mass. 637, Parsons, C. J., says: "In the construction of this statute it has been held, that although the deed of conveyance be not acknowledged or registered, yet the conveyance to the first purchaser shall be good against a second purchaser, who had notice of the prior conveyance. The registry of a deed was required, to give more general notice of the conveyance than would result from livery of seizin which was prescribed by the common law for the purpose of notice. But if a second purchaser has, in fact, notice, the intent of the registry is answered, and to permit him to hold against the first purchaser would be to convert the statute into an engine of fraud, instead of a protection against it."

Marshall *vs.* Fisk, 6 Mass. 24.
Davis *vs.* Blunt, 6 Mass. 489.
Prescott *vs.* Heard, 10 Mass. 60.
McMechan *vs.* Griffin, 3 Pick. 149.

In this last case, the court says (p. 153): "It was also determined, and it is equally well settled as the sound construction of the statute, that as the registry was designed only to give notice, and thereby to prevent purchasers being imposed upon by prior conveyances, any notice of the first conveyance to a subsequent purchaser, before his purchase, is equivalent to the registry of the deed. Trowbridge's Reading on the Statute, 3 Mass. R. 573. If the subsequent purchaser thus affected with notice should nevertheless complete his purchase, intending to get his deed recorded before the first purchaser, and thereby to hold the estate, it would

be a manifest fraud upon the first purchaser, and therefore void as to him. 'Valid transactions as between the parties,' says Lord Mansfield, 'may be fraudulent by reason of covin, collusion, or confederacy to injure a third person: for instance, A buys an estate from B and forgets to register his purchase deeds; if C, with express or implied notice of this, buys the estate for a full price, and gets his deeds registered, this is fraudulent, because he assists B to injure A.' Worseley *vs.* De Mattos, 1 Burr. 474. C's deed in the case supposed, being fraudulent, cannot be set up against A, who afterwards gets his deed recorded, without supposing, what can never be supposed, that the statute was intended to sanction fraud. In the case of Le Neve *vs.* Le Neve, Lord Hardwicke says 'that the taking of a legal estate after notice of a prior right makes a person a *malâ fide* purchaser. This is a species of fraud and *dolus malus* itself; for he knew that the first purchaser had the clear right of the estate, and after knowing that, he takes away the right of another person by getting the legal estate. And this exactly agrees with the definition of the civil law of *dolus malus*. Dig. lib. 4, tit. 3, lex 2. Fraud, or *malâ fides*, therefore, is the true ground on which the court is governed in cases of notice.' 3 Atk. 654. On this ground, numerous cases have been decided, both in this country and in England; and the principle is too well supported by authority, and too clear, to admit a reasonable doubt."

"To determine what notice is sufficient to supply the place of a prior registry, is more difficult. The notice, say the authorities, must be either express or implied."

In Black et al. *vs.* Zacharie, 3 How. 512, the court says: "Out of Louisiana, we believe, that no such question could possibly arise; for courts of law, as well as courts of equity, are constantly, in all States where the common law prevails, in the habit of holding a prior assignment of the equitable interest in stock as superseding the rights of attaching creditors, who attach the same with a full knowledge of the assignment."

In the following cases not already cited, and outside of

Massachusetts, it has been held that a title, legal or equitable, passes between the parties to an informal transfer of stock: —

Stebbins *vs.* Phœnix Fire Ins. Co., 3 Paige, 350.
Mechanics' Bank *vs.* N. Y. & N. H. R.R. Co., 13 N. Y. 626.
N. Y. & N. H. R.R. Co. *vs.* Schuyler, 34 N. Y. 80.
Leitch *vs.* Wells, 48 N. Y. 585.
Grimes *vs.* Hone, 49 N. Y. 17.
Johnson *vs.* Underhill, 52 N. Y. 211.
Holbrook *vs.* N. Y. Zinc Co., 57 N. Y. 623.
Cushman *vs.* Thayer Manuf. Jewelry Co., 76 N. Y. 371.
Brisbane *vs.* Delaware & L. R.R. Co., 94 N. Y. 204.
Chouteau Spring Co. *vs.* Harris, 20 Mo. 387.
Boatman's Ins. Co. *vs.* Able, 48 Mo. 136.
Moore *vs.* Bank, 52 Mo. 377.
Merchants' National Bank *vs.* Richards, 74 Mo. 77.
Merchants' National Bank *vs.* Richards, 6 Mo. App. 454.
Cherry *vs.* Frost, 7 Lea, 1.
Planters' & Merch. Mut. Ins. Co. *vs.* Selma Sav. Bank, 63 Ala. 585.
Kellogg *vs.* Stockwell, 75 Ill. 68.
Otis *vs.* Gardner, 105 Ill. 436.
Conant *vs.* Seneca Co. Bank, 1 Ohio St. 298.
Bank of Commerce's Appeal, 73 Pa. St. 59.
Bruce *vs.* Smith, 44 Ind. 1.
Vansand *vs.* Middlesex Co. Bank, 26 Conn. 144.
Colt *vs.* Ives, 31 Conn. 25.
Reed *vs.* Copeland, 50 Conn. 472.
Lockwood *vs.* Mech. Nat'l Bank, 9 R. I. 331.
Union Bank *vs.* Laird, 2 Wheat. 390.
Williams *vs.* Mechanics' Bank, 5 Blatch. 59.
Becher *vs.* Wells Flouring Mill Co., 1 Fed. Rep. 276.

There is no case to be found in which a transfer act has been held to make an informal transfer altogether invalid.

Lowell on Transfer of Stock, § 91.

In the following cases, informal transfers have been held to be good between the parties, and as against attaching creditors with notice of the transfers.

Johnston *vs.* Laflin, 103 U. S. 800.
Sabin *vs.* Bank of Woodstock, 21 Vt. 353.
Noyes *vs.* Spaulding, 27 Vt. 420.
Cheever *vs.* Meyer, 52 Vt. 66.
Newberry *vs.* Detroit & Lake Superior Iron M. Co., 17 Mich. 141.
Eastman *vs.* Fiske, 9 N. H. 182.
Scripture *vs.* Francestown Soap Stone Co., 50 N. H. 571.
Bank of America *vs.* McNeil, 10 Bush (Ky.), 54.
Weston *vs.* Bear River and Auburn W. & M. Co., 6 Cal. 425.
Farmers' National Gold Bank *vs.* Wilson, 58 Cal. 600.

No case can be found where an attaching creditor with notice of a prior informal transfer of stock has been held to have the superior title.

Lowell on Transfer of Stock, § 105.

D.

There is nothing in Travis *vs.* Bishop, 13 Met. 304, Denny *vs.* Lincoln, 13 Met. 200, and Bingham *vs.* Jordan, 1 Allen, 373, that should prevent the application of the doctrine of Black *vs.* Zacharie as the rule of law governing this case.

By the law of Massachusetts, the sale of corporeal personal property is good only between the parties where there is no delivery.

Lanfear *vs.* Sumner, 17 Mass. 110.
Burge *vs.* Cone, 6 Allen, 412.

Under the Statute of Frauds of Massachusetts, R. S. (1836), Ch. 74, § 5, the record of a mortgage of personal property is held equivalent to a delivery.

Bullock *vs.* Williams, 16 Pick. 33.

Where there is no delivery of the property or record of the mortgage, no title passes except between the parties, and a subsequent purchaser with notice, takes the title.

But by what analogy can cases applicable to a statute in regard to mortgages of corporeal personal property, not delivered, passed for the purpose "of preventing frauds and perjuries in contract," be held to apply to a transfer rule for incorporeal personal property, which has, in legal effect, and as regards the transfer rule, been delivered under the transfer? For the executed written transfer, accompanied by a delivery of the certificates, is equivalent to the delivery of corporeal personal property, or, in the case of a mortgage of personal property, the recording of the mortgage.

Fisher *vs.* Essex Bank, 5 Gray, 378.
Bank *vs.* Lanier, 11 Wall. 377.
Dewing *vs.* Perdicaries, 96 U. S. 193, 196.

The personal mortgage statute is to prevent frauds and perjuries, partly by providing in the record of the written mortgage an equivalent for delivery. A registry act, is for the purpose of giving notice of title.

Other courts have refused to give such a construction to similar statutes concerning mortgages of personal property.

Allen *vs.* McCalla, 25 Iowa, 464.
Gooding *vs.* Riley, 50 N. H. 400.
Lewis *vs.* Palmer, 28 N. Y. 277.
Simons *vs.* Pierce, 16 Ohio St. (N. S.) 215.

Moreover, in Denny *vs.* Lincoln, 13 Met. 200–203, the court questioned whether the principle of Travis *vs.* Bishop extended to an attaching creditor, and in Shapleigh *vs.* Wentworth, 13 Met. 358, disclaimed passing upon the question.

Especially might a different rule in Massachusetts be held to apply to the construction of a transfer act in relation to stock, when the doctrine there in regard to the rights of an attaching creditor in the case of incorporeal property is different from that in the case of corporeal property. In the

former case, he is held to stand on no better footing than his debtor.

Dix *vs.* Cobb, 4 Mass. 508.
Wakefield *vs.* Martin, 3 Mass. 558.
Wood *vs.* Partridge, 11 Mass. 488.
Providence County Bank *vs.* Benson, 24 Pick. 204.
Richards *vs.* Smith, 9 Gray, 315.
Martin *vs.* Potter, 11 Gray, 37.
Kingman *vs.* Perkins, 105 Mass. 111.
Thayer *vs.* Daniels, 113 Mass. 129.

There is, then, no decision in Massachusetts that covers the ground covered by the decision of this court in Black *vs.* Zacharie. The decision of this court must, therefore, control the judgment in this cause.

Carroll *vs.* Carroll, 16 Howard, 275.
Burgess *vs.* Seligman, 107 U. S. 20, 33.

E.

Even the cases of Fisher *vs.* Essex Bank, Blanchard *vs.* Dedham Gaslight Co., and Central National Bank *vs.* Williston are not binding upon this court.

Fisher *vs.* Essex Bank gives the construction to a transfer act in a special charter, and the words "transferable *only*" on the books of the bank were regarded as controlling. No such language is to be found in the transfer act of 1870, under which this case arises.

The court that decided Fisher *vs.* Essex Bank had in Eames *vs.* Wheeler declared that the transfer act applicable to stock in a manufacturing corporation, "in providing one mode of alienating the shares of stockholders, *does not prohibit any other mode of alienation.*" The language of the act, Ch. 65, St. 1808, § 4, was "that any share may be alienated by the proprietor thereof, by deed . . . recorded by the clerk," etc.

The case of Blanchard *vs.* Dedham Gaslight Co. gave in a *per curiam* opinion, a construction to the transfer act

applicable to manufacturing corporations, on the authority of Fisher *vs.* Essex Bank. But the transfer act then applicable to manufacturing corporations differs from that of 1870, under which this case arises. The language of the first (St. 1846) was, "Any shares in manufacturing corporations may be transferred by the proprietor thereof, by an instrument in writing, under his hand, recorded by the clerk of the corporation in a book to be kept for that purpose."

The transfer act of 1870 is as follows: "Shares may be transferred by the proprietor, by an instrument in writing under his hand, *which shall be* recorded by the clerk of the corporation in a book to be kept for that purpose." In this act, the recording is not made an incident of the transfer. The transfer having been made by a writing, the act is mandatory upon the clerk, and perhaps, transferee to record the instrument of transfer. The change in phraseology is marked, and for a purpose. The previous phraseology had stood for sixty-two years, it had misled the court in Blanchard *vs.* Dedham Gaslight Co., and may well be supposed to have been changed in a new general law of corporations, to overrule that decision. Certainly, the decision of the Massachusetts court construing the transfer act of 1846, made in opposition to previous decisions without showing a purpose to overrule them, will not be held to be binding on this court in giving a construction to the different transfer act of 1870.

Moreover, the cases of Fisher *vs.* Essex Bank and Blanchard *vs.* Dedham Gaslight Co. were in effect modified, on the authority of the earlier Massachusetts cases, by the case of Dickinson *vs.* Central National Bank. In this last-named case, the court held that an assignment of stock to a creditor, as collateral security for a debt, in a national bank, transferable on the books of the bank, where no transfer was made on the books of the bank, was valid against assignees in bankruptcy, who took only the rights of the debtor. But, as at common law, the attaching creditor, in the case of incorporeal property, takes only the rights of the debtor, the principle of the case would have made

the unrecorded assignment to the creditor as security valid as against an attaching creditor without notice.

Mr. Justice Lowell in Continental National Bank *vs.* Eliot National Bank, *ubi supra*, says of Fisher *vs.* Essex Bank (and the remark must also apply to Blanchard *vs.* Dedham Gaslight Co., based upon that case), "It has, moreover, been seriously modified, if not wholly overruled, in Massachusetts, in Dickinson *vs.* Central National Bank, 129 Mass. 279."

This was the state of the law in Massachusetts when the case at bar was tried in the United States Circuit Court in 1881. The decision in Central National Bank *vs.* Williston, made in 1884, is, therefore, not binding on this court.

Burgess *vs.* Seligman, *ubi supra.*

Still further, the case of Central National Bank *vs.* Williston is not decided, upon the exclusive ground that, under the transfer act of 1870, the title of an attaching creditor without notice is superior to the title of an assignee under an unrecorded assignment, because the case finds that a complete written transfer had not been actually executed. The certificate had been delivered as collateral security, with a printed assignment in blank signed by the owner indorsed upon it; but the assignment had not been filled out when the stock was attached as the property of the assignor. The court says: "At that time [*i.e.*, of the attachment], the blank assignment had not been filled out, or presented for record, and no demand had been made on the corporation for a new certificate, and the attaching creditor had no notice of the assignment. That upon *these facts*, the statute makes the assignment invalid as to him, cannot be doubted." The case could have been decided in accordance with Massachusetts cases solely on the ground that no written transfer had been made.

Boyd *vs.* Rockport Steam Cotton Mills, 7 Gray, 406.
Johnson *vs.* Somerville Dyeing and Bleaching Co., 15 Gray, 220.

The question of what effect is to be given to the transfer act of 1870 has not been decided by the highest court in Massachusetts in a way to prevent this court from deciding it in accordance with its own decisions, and what it regards as the true doctrine.

F.

This transfer act does not make the recording of the transfer necessary to the passing of title between the parties.

There is nothing in the statute to indicate that it is intended for the benefit of strangers to the corporation.

It is part of the statute law applicable to private manufacturing corporations organized under general laws, and in its terms only undertakes to give a rule by which to determine who are to take dividends, vote, and have the rights and liabilities of stockholders.

At most, it prescribes the formality for passing the legal title, leaving the rights of parties in all other respects as before, to be determined by the common law.

It makes no reference to creditors of a stockholder. They have no relations as such to the corporation. Why should the transfer act, which is obviously and in terms for the benefit of the corporation and its members, be held to be also for the benefit of attaching creditors who are strangers to it?

It cannot properly have the effect of a registry act, because the records of the corporations are not public, but private records. They do not give constructive notice of their contents.

Salisbury Mills *vs.* Townsend, 109 Mass. 115.

The corporation is not bound to record all instruments of transfer presented for record. On the contrary, it is a trustee for all its stockholders of all their titles; and, if it records a transfer to the injury of any one of them, it is liable for such injury.

Sargent *vs.* F. Ins. Co., 8 Pick. 97.
Thompson *vs.* Page, 1 Met. 570.